



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Lapointe v Waram, 2023 ONLTB 79001

Date: 2023-12-

06 File Number: LTB-L-
036206-22

In the matter of: 2, 327 MOUNTAIN ST
SUDBURY ON P3B2T8

Between: Patrick Lapointe Landlord

And

Adam Waram Tenant

Patrick Lapointe (the 'Landlord') applied for an order to terminate the tenancy and evict Adam Waram (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 31, 2023.

The Landlord, the Landlord's legal representative, Monique Laderoute ('ML'), and the Tenant attended the hearing.

Preliminary Issue:

1. The certificate of service that was filed with the application states that the N12 notice of termination on which the application is based (the 'N12 notice') was served on the Tenant by leaving the document in the Tenant's mailbox or the place where mail is normally delivered on June 28, 2022.
2. The termination date in the N12 notice was August 31, 2022.

3. The Tenant said he was originally given a different N12 notice. The Tenant said the N12 notice that this application is based on was not left in his mailbox on June 28, 2022, and he was not aware of it until about one month before the original hearing date for this matter, which was March 6, 2023.
4. The Tenant also said that he did receive compensation by e-transfer in an amount equal to one month's rent, as required by section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act'), but he received it on June 27, 2022, before this N12 notice was purportedly served. The Tenant said that the compensation was given in relation to a previous N12 notice, relative to which the Landlord filed a different application. The Landlord did file a different application based on a previous N12 notice (file LTB-L-017226-22), but that application was withdrawn.
5. The Tenant did confirm that he received a text message on June 23, 2022 from the Landlord saying that the application in LTB-L-017226-22 would be withdrawn and was told a new N12 notice would be forthcoming.
6. The Tenant said there are 2 mailboxes at the residential complex, and he normally gets his mail in the mailbox below the porch stairs, but that he checks both mailboxes because the numbers on the mailboxes were removed.
7. There is another tenant in the residential complex. The Tenant did not know if that tenant also checks both mailboxes, but did not believe the other tenant checked the mail often.
8. ML filled out and signed the certificate of service, certifying that she left the N12 notice in the Tenant's mailbox on June 28, 2022. She said a previous N12 notice was given to the Tenant on June 26, 2022, which is why the compensation was paid that day. She said that N12 notice was replaced the next day together with a note advising the Tenant to disregard the June 26, 2022 notice, as it contained an error in the postal code. ML said one of the mailboxes was labeled "unit 2" and she put the N12 notice in that mailbox on June 28, 2022. She said the mailbox was at the bottom of the porch stairs.
9. The Tenant submitted that he did not receive the N12 notice, so the application ought to be dismissed. ML reiterated that she personally put the N12 notice in the mailbox, and the Tenant was properly served on June 28, 2022.
10. I accept ML's evidence that she put the N12 notice in the Tenant's mailbox on June 28, 2022. It is possible the Tenant received it but does not recall or accidentally discarded it. It is also possible that after ML put it in the mailbox, it was removed by someone else, such as the other tenant in the residential complex.
11. Leaving a document in the mailbox where mail is normally delivered is a permitted method of service pursuant to Subsection 191(1)(d) of the Act and rule 3.1(c) of the LTB's *Rules of Procedure*.
12. I therefore find that the N12 notice was effectively served on the Tenant on June 28, 2023.

Determinations:

13. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
14. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice

15. On June 28, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of his own residential occupation.

Landlord's Evidence

16. The Landlord said that the N12 notice was given in good faith.
17. The Landlord said the current rent is \$563.75 per month. He said it increased from \$550.00 on February 1, 2023, and there is no rent deposit. The rent is due on the first day of each month.
18. The Landlord presented as evidence a copy of the interac etransfer sent to the Tenant on June 27, 2022, confirming that \$550.00 was sent to the Tenant and deposited. The Message states that it is for "Compensation for N12".
19. The Landlord said he presently lives with his parents in Sudbury, and wishes to move to the rental unit. He said that at his parents house he does not have a proper bedroom. He said that there are 2 units in the residential complex, but he wants to move into the rental unit instead of the other unit because the other unit is a 4-bedroom and is too large for him. The rental unit is a one-bedroom unit, and he said it makes more sense for him to live there.
20. The Landlord said his intention is to live in the rental unit indefinitely. He said it will be at least 12 months, but his intention is to stay well beyond that timeframe. He said he plans to move in as soon as possible.
21. On cross-examination, the Landlord said that he has always lived with his parents, but he lives in a room in the basement. He said there is just enough room for a bed and his desk, and he keeps his clothes in a common area of the basement. He said he also works from home.
22. The Landlord also confirmed that there were originally 3 mailboxes at the residential complex, but said since there are only two units, he removed one mailbox and labelled the two remaining.
23. The Tenant put to the Landlord that there are actually 3 residential units in the building, and the third is a bachelor unit. The Landlord denied this. He said it is registered as a 2unit building, and that is what it is.

Tenant's Evidence

24. The Tenant presented a copy of an N4 notice he was given by the Landlord. He said he received it when his rent was one day late. He also presented evidence that comparable units nearby are more expensive, and the rent is about double what he presently pays. He said he would not be able to find similar accommodation, and believes that the real motive for the Landlord seeking to end his tenancy is his low rent.
25. The Tenant said that the other unit in the building was vacant when the Landlord purchased it, that three people moved in for a time, but it has been vacant for the last 8-9 months. He said a neighbour told him that the Landlord is setting the other unit up to rent to students. The Tenant said that if the Landlord really wanted to move in, he would move to the other unit.
26. The Tenant said he does not know the Landlord's plans for certain, but does not believe his intention is genuine.

Law & Analysis

27. Section 48 of the Act permits a landlord to give a notice of termination if the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by, *inter alia*, the landlord himself or herself for a period of at least one year.
28. The owner of a rental unit has a residual bundle of rights in the property, subject only to the tenancy. The test for whether the N12 notice was given in good faith is whether there is a genuine intent on the part of the Landlord to occupy the rental unit: *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), paras 17-18.
29. The legal test for good faith is about whether the Landlord's intention is genuine, and not the reasonableness of the Landlord's proposal: *Fisher v. Michel*, 2022 ONSC 6558 (CanLII), para 30.
30. I accept that the Landlord's genuine intention is to move into the rental unit and to live there for a period of at least one year. Whether the Landlord's decision not to move into the other larger unit is reasonable or not is immaterial. The Landlord's evidence about his intention was clear, convincing, and cogent. His evidence remained consistent on cross-examination, and there was no convincing evidence to the contrary.
31. The Landlord compensated the Tenant an amount equal to one month's rent by August 31, 2022. I acknowledge that the compensation was paid the day before the N12 notice was given. There is nothing in the Act prohibiting payment of compensation before the notice is given. I accept that the N12 notice was given with a note advising the Tenant to disregard the previous notice, and the message in the e-transfer clearly indicated it was compensation for the N12 notice.
32. The Tenant was required to pay the Landlord \$7,823.75 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to October 31, 2023. This is simply a calculation of the rent that came due during this period.

33. Based on the Monthly rent, the daily compensation is \$18.53. This amount is calculated as follows: $\$563.75 \times 12$, divided by 365 days.
34. There is no last month's rent deposit.

Relief from Eviction

35. The Tenant said that if his tenancy is terminated, he would need 6-8 months to find a new place to live. He said he has a lot of personal property, and it would be easier to move in the Spring. He also said there are not many rental units on the market right now. He said he just started a new job after being unemployed for 8 months, so he would need some time to save money to secure another rental unit. He also said the rental unit is in a convenient location for him, close to his gym, workplace, and other activities he participates in. His job starts at 6:30 a.m. and he said the rental unit is less than 10 minutes away. The Tenant said he thinks there will be more rental units available in the Spring when post-secondary students are leaving.
36. On cross-examination, the Tenant said he lives alone. He said he has been actively looking for other rental units, but prices have gone up a lot.
37. The Tenant submitted that if the application is not dismissed, then eviction should be delayed by 6-8 months.
38. The Landlord sought an eviction order without delay. ML submitted that the Tenant has already had 16 months since being given the N12 notice to find other accommodation.
39. While the Tenant could have been looking for other accommodation since the N12 notice was given (and his evidence was that he has), he was entitled to challenge the N12 notice and to have a hearing. I accept that the Landlord intends to move into the rental unit as soon as possible, but he has a place to stay until the Tenant vacates even if that living situation is less than ideal. The Tenant, on the other hand, said he does not have anywhere else to go, and would need to find a new rental unit. Eviction will be delayed to afford the Tenant a reasonable amount of time to find and secure other living accommodation.
40. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until February 28, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2024.
2. If the unit is not vacated on or before February 28, 2024, then starting March 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 1, 2024.
4. The Tenant shall pay to the Landlord \$7,823.75, which represents compensation for the use of the unit from September 1, 2022 to October 31, 2023. Any amount the Tenant has paid the Landlord for rent for this period shall be deducted from this amount.
5. The Tenant shall also pay the Landlord compensation of \$18.53 per day for the use of the unit starting November 1, 2023 until the date the Tenant moves out of the unit.

December 6, 2023

Date Issued

Mark Melchers
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on September 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.